IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 4095 of 2006

Date of decision: 16.11.2006

S.M. Khan

..... Petitioner.

Versus

Smt. Leela Devi Chauhan

..... Respondent.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. M.L. Sarin, Advocate with
Ms. Alka Sarin, Advocate
for the petitioner.

Mr. R.K. Gupta,Advocate
for respondent No.1.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed by the defendants against concurrent findings recorded by the trial Court and the Lower Appellate Court allowing an application filed by the plaintiff for interim injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure restraining the petitioner, defendant No.2 in the suit from dispossessing the plaintiff from the suit property forcibly and illegally during the pendency of the trial except by following due course of law.

Respondent No.1, plaintiff in the suit had filed the suit alleging that she is a tenant in House No. 4 Sector 27-A, Chandigarh since 1966.

According to her she is in occupation of the entire house except one room stated to be a garage which is in occupation of the petitioner as a tenant. She contended that both the defendants were trying to dispossess her from the tenanted premises forcibly and illegally. Therefore she filed the present suit for a decree of permanent injunction restraining the defendants from interfering in her possession over the aforesaid property. The defendants contested the suit by filing reply. They claimed that the plaintiff was not in possession of the entire house as claimed by her. According to them defendant No.2 was tenant in occupation of one room but he had a right to use a common toilet and bathroom. He contended that the room had two entries, one from the front and other from the common passage in centre of the said house. The toilet and bathroom were in the rear portion of the house and he was using the same by accessing the same from the common passage.

To assess the situation of the property, the trial Court appointed a Local Commissioner. The Local Commissioner visited the property and submitted a report. The report has been placed on the record of this revision as Annexure P-7.

After examining the pleadings of the parties and the report placed on the record the trial Court granted injunction in favour of the plaintiff with the following observations:

> "... It is pertinent to mention that Mr. Rajwinder Singh, Advocate, who was appointed Local Commission had filed his L.C. Report in the Court on 22.8.05 as per which he had visited the suit property on 12.8.2005. As per his report, defendant No.2 was found to be in possession of one room depicted with

letters A,B,C,D in his site plan in red colour and remaining portion was found in the possession of plaintiff except the fact that defendant no.2 had installed exhause part of his split A.C. On the roof top and there was a bathroom and toilet on the rear side of the suit property.

9. In my point of view, although defendant no.1 landlord has sold away entire suit property to defendant no.2 tenant and alleged to have handed over symbolic possession, but for the purposes of considering injunction, possession at the time of institution of suit is a relevant factor to consider prevention of forcible & illegal dispossession by taking law in hand by any person.

10. Although, defendant no.2 has installed exhause part of his split A.C. On the roof top of suit property, but having regard to the pleadings of the parties and L.C. report at this stage, prima facie, it comes out that defendant no.2 is only in possession of one room depicted with letters A,B,C,D in red colour in site plan and remaining portion of the suit property is in occupation of plaintiff including entire common passage and toilet & bathroom on the rear side never meant for use of defendant no.2 and roof of the suit property also never remained in occupation of defendant no.2."

The lower Appellate Court affirmed the findings recorded by the trial Court with the following observations:-

"... In the light of the above backdrop after scanning the pleadings of the parties, the material placed on file and the impugned order passed by the lower court I find the present appeal filed by the appellants to be devoid of merits. Even Local Commissioner was appointed by the lower court. He on inspection of the spot, had prepared the site plan of this property. A bare perusal of the same would reveal that defendant no.2 is in possession of one room in the front. In that room, he was running his business as property Consultancy. The same was opening in the front court yard. No doubt it has also a door opening in the gallery. But that does not mean that this defendant no.2 while running this business as such was having any access to the gallery or to the bath room and toilet situate towards the rear court yard of this building. The plaintiff has been residing in the premises in dispute along with her family members. In such a situation it can not be taken by any stretch of imagination that this defendant no.2 was given right to encroach upon the privacy of the plaintiff by passing to the gallery and then going to the rear court yard. When he had taken this one room on rent for being used as office it cannot be taken that he had any right to use, in that capacity as tenant the gallery, toilet and stairs.

9. Merely because the split air conditioner was lying on the roof top of this room in occupation of defendant no.2 it

cannot be taken that this defendant no.2 has a right to use stairs in the gallery. Occasionally he could use the stairs for going to the roof top but the stairs could not be taken to be a part of the tenanted premises. In such a situation defendant no.2 has got right to interfere with the possession of the plaintiff on the remaining portion of this building. He was at liberty to utilize the alleged room which was in his occupation the way he liked but he could not dispossess the plaintiff from the remaining portion nor he could interfere into her right to use the remaining building.

10. As far as defendant no.1 was concerned, he has certainly no right to interfere into the building in dispute particularly when the plaintiff and defendant no.2 were in occupation of the whole of this building as tenants. It is settled law that once a tenant always a tenant. The plaintiff being in occupation of the property as tenant could only be dispossessed therefrom in accordance with law. The defendant no.1 has, therefore, no right to interfere into her possession in an illegal and forcible manner."

It is these orders which are challenged by the petitioner in this revision petition. Mr. Sarin, learned Senior counsel appearing on behalf of the petitioner contends that a reading of the report of the Local Commissioner itself shows that the passage is said to be a common passage. According to him the petitioner was not only in possession of one room

Mark ABCD but also had right to use the common passage and also the bathroom.

After going through the report of Local Commissioner I am not inclined to agree with this contention. A reading of the opening portion of the report of the Local Commissioner shows that the petitioner is occupying only one room Mark ABCD. The Local Commissioner has categorically reported that it is the plaintiff who was occupying the rest of the rooms whose position and usage are explained by him specifically. The relevant observations of the Local Commissioner are as hereunder:

> "The defendant no.2 and 3 are occupying one room ABCD shown in red colour in the site plan and are doing the business of property dealing in the name and style of S.M. Khan Property Builder and Property Consultant. It has door No.1 opening into the gallery/passage. The plaintiffs are occupying the rest of the rooms whose position and usage are stated as under"

I have also seen the site plan which is on the record as well as the report of the Local Commissioner. A reading of the site plan would show that the area in possession of the plaintiff in front of the house is connected to the bedroom, a store and the bathroom situated in the middle and rear of the house through the common passage. In this common passage the local commissioner has also found a shelf and water tank belonging to the plaintiff. It is equally apparent from a perusal of the site plan that this entire portion of the house is in possession of the plaintiff. Merely because the petitioner has installed an air-conditioner in his room. A part of which is on the roof would not indicate that the petitioner was in

possession of any other part of the house except one room/ garage which is in his possession.

At this stage I cannot also totally ignore the submission made by the learned counsel for the plaintiff that in fact the petitioner is a Property Dealer and has purchased the property from the original owner. It is the case of the plaintiff that it is for this reason that the petitioner is harassing him so as to force him to vacate the premises. However, Mr. Sarin has vehemently denied this contention by stating that no such averment has been made in the pleadings.

Be that as it may I do not find any ground to disturb the concurrent findings recorded by the courts below while granting interim injunction to the plaintiff.

Before concluding it would be necessary to note here a contention raised by learned counsel for the petitioner. Mr. Sarin has contended that in the main suit as also in the interim application he had made a counter claim as well. He had prayed that he should be permitted to construct on the roof of first floor of the premises and he had also asked for this permission as interim measure. I am of the opinion that a relief of this nature as asked for would have to be considered by the court at the time when the suit is being finally decided. As an interim measure in the facts of this case, it would not be appropriate to grant such a relief once both the courts have returned con-current findings that the entire premises except for one room in front of the house was in possession of the plaintiff.

For the reasons aforementioned I find no merit in this revision petition and the same is accordingly dismissed. However it is clarified that the observations made in this revision petition are only for the purpose of

deciding the interim application and would have no influence on the merits of the suit which would be decided by the trial Court on the basis of pleadings and the evidence led before it.

November 16, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**